Supreme Court, U.S.
FILED

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In the

SUPREME COURT OF THE UNITED STATES

October Term 1996

. . . . . *. . . . . .

EZEKIEL O. OSINOWO,

Petitioner,

v.

CONTROLLER OF NEW YORK CITY,

Respondent

. . . . . *. . . . . .

On Petition For A Writ of Certiorari

To The United States Court Of Appeals

For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

EZEKIEL O. OSINOWO
1133 FOREST AVENUE #B-OFF
BRONX, NY 10456
(718) 378-0092

QUESTIONS PRESENTED FOR REVIEW

I

Does District Court Have Jurisdiction on this Case?

II

The Respondent Did Not Respond to the Petitions, what Should the Courts Have Done for Several Occasions from State Court to District Court and United States Court of Appeal ?

III

United States Court of Appeal for the Second Circuit and the United States District Court neglected the Feldman Doctrine that Accepted Applied by the Parties. Why Did the Courts Disagree?

IV

United Stated Court of Appeal Did not Consider the Facts of the Case. Neither the District nor the State Court, Why?

V

United States Court of Appeal of the Second Circuit Did not Use Conventional Approach in Judgement, Why?

LIST OF PARTIES TO THE PROCEEDINGS BELOW

Ezekiel O. Osinowo
1133 Forest Avenue # B-OFF
Bronx, NY 10456 (Petitioner)

Vs

Controller of New York City (Respondent)

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II Conventional Wisdom in law was not used in judgment

III The Court of Appeals improperly weighted Petitioner's brief of facts

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TABLE OF AUTHORITIES

Denial of Dues Process
- Fed. R.C. P. 52 (b)

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Feldman Doctrine 1

FEDERAL STATUES

28 U.S.C. § 2403

STATE STATUES

NY C.P.L.R. 7804(e) App 11

REPORT OF THE OPINIONS OF THE SECOND CIRCUIT

The United States Second Circuit Court of Appeal distorted justice on this case twice on June 11, 1996 for reconsideration, and first on April 10, 1996 by over discharging its duty without request.

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STATEMENT OF SUPREME COURT JURISDICTION

Justice without due process is not constitutional in this land. Hence, a redress is a must in this case before the court. Feldman Doctrine was wrongly interpreted and the quoted judgement was under reconsideration by District Court - (95 Civ 4279 (Quoted Jugdment 95 Civ 2980)

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CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

Civil Rights of Petitioner to justice through due process was denied twice by Second Circuit.

The Second Circuit (Court of Appeal) has interpreted the Rooker-Feldman Doctrine to mean that "an inferior federal court established by Congress pursuant of Article III, Sectional I, of Constitution may not act as an appellate Tribunal for purpose of over ruling a State Court Judgement even Though the Judgement may rest on an erroneous resolution of Constitutional or Federal law issues. The exclusive procedure for Federal review is specified at 28 USC # 1257"

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STATEMENT OF PROCEEDINGS AND DISPOSITION

Date: Summarized Contents of Reports:

2/7/96	Copy of district court docket entries and notice of appeal on behalf of Appellant Ezekiel O. Osinowo filed (96-7134) (pr21)
2/7/96	Note: This appeal was PRO SE when filed (pr21)
2/7/96	Copy of U.S. District Court order dated 12-15-96 filed.
2/7/96	Copy of U.S. District Court judgement dated 12-28-95 filed (pr21)
2/7/96	Copy of U.S. District Court memo endorsed dated 1-10-96 filed. (pr21)
2/7/96	Record on appeal filed. (Original papers of district court.) (pr21)
2/7/96	Copy of receipt re: payment of docketing fee filed on behalf of Appellant Ezekiel O. Osinowo receipt # 254703. (96-7134) (pr21).
2/16/96	Scheduling order # 1 filed. Appellant's brief and appendix due on 3/18/96. Appellee's brief due on 4/16/96. Argument as early as week of 5/7/96. (pr28).
2/16/96	Notice to counsel and pro se appellant of scheduling order # 1. (pr28).
2/23/96	Notice of appearance from on behalf of

	Ezekiel O. Osinowo, received. (Orig. to Calendar) (Please Note-This form is INCOMPLETE. appellant FAILED to pro vide mailing address on form) (in01).
2/26/96	Appellant Ezekiel O. Osinowo motion for appointment of counsel FILED (w/pfs). (763834-1) (pr21).
3/29/96	Scheduling order # 1 filed. Appellant's brief and appendix due on 4/29/96. Appellee's brief due on 5/29/96. Argument early as week of 6/1996. (pr21).
4/10/96	The Court noting that a scheduling order #1 having been entered in error on March 29, 1996, it is hereby ordered that the said order be and it hereby is vacated. (pr21)
4/10/96	Order FILED DENYING motion for appoint ment of counsel (763834-1) by appellant Ezekiel O. Osinowo, and the appeal is dismissed as so indisputably lacking in merit as to be frivolous. See Neitzke v. Williams. 490 U.S. 319 (1989); Pillay v INS., 45 F. 3d 14 (2d Cir. 1995). The dis trict court properly held that it lacked jurisdiction to review state court judicial decisions. See District of Columbia Court of Appeals v Feldman, 460 U.S. 462, 482 (1983); Atlantic Coast line R.R., Co. c. Brotherhood of Locomotive Engineers

398 U.S. 281, 196 (1970). Order endorsed on motion dated 2/26/96. (RKW, DGJ. GC) (pr 21).

4/10/96 Certified copy of order dated 4-10-96 disposing of the appeal issued to district court (pr21).

4/10/96 This appeal (96-7134) is disposed by the order dated 4-1096 dismissing that appeal (pr21).

5/30/96 Record on appeal RETURNED to lower court. No of volumes: 1 (ref).

6/13/96 Appellant Ezekiel O. Osinowo motion to reconsider the subject matter jurisdic tion judgement FILED (w/pfs) (8114854-1) (pr21).

7/11/96 Order FILED DENYING m otion to recon sider decision (8114854-1) by appellant Ezekiel O. Osinowo, endorsed on motion dated 6/13/96. "IT IS HEREBY ORDERED that the motion be and it hereby is denied." (Hons. RKW, DGL, AND GC, C.J.J.) (pr29).

STATEMENT OF FACTS

No due process involved in the trial; Where petitioner and defendant agreed was ignored; Constitutional right of plaintiff was ignored; Conventional approach in judgment was abased; No facts of the case was considered before judgement and no response of appellee disregarded.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT OF CERTIORARI

I Certiorari is warranted because the Second Circuit failed to give petitioner due process as the District Court. It was done twice.

II Conventional wisdom in law was not used in judge ment.

III The Court of Appeals improperly weighted Petitioner's brief of facts.

The first opinion went beyond the appellent's request the statement of facts above are essential facts for the court to intervene in this case. No opinion was written on the case at second review. Can it be claimed as colleague reflection?.

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CONCLUSION

The last Appoitment Justice to the United States Supreme Court projected "Justice for People" is his mott! In this distorted justice was constantly meted out to the Petitioner by the Second Circuit Court of Appeals. A redress of this issue is a must.

Therefore, Petitioner Ezekiel O. Osinowo, respectfully request the Court to grant his petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit.

Respectfully submitted
Ezekiel O. Osinowo
1133 Forest Avenue #B-Off, Bronx, NY 10456
(718) 378-0092

App. 1

EZEKIEL O. OSINOWO
Plaintiff

v.

CONTROLLER OF NYC, Defendant

No. 95 CIV 4297 (JSM)

United States District Court
Southern District of New York

Dec. 26, 1995

Sirs:

PLEASE TAKE NOTICE that upon the annex affirmation of Mr. Ezekiel O. Osinowo, sworn to or affirmed on 12/20/95 and upon complaint herein, the plaintiff will move this court. Southern District or New York, U S D J in room
United States Courthouse, Foley Square, New York, NY 10007, on 2/7/96 at 9:30 A.M. or as soon thereafter as counsel can be heard, for an order in pursuant to rule 60 (b) of the Federal Rules of civil Procedure granting a reconsideration of the order dated 12/15/95 by judge JS Martin Jr.

Dated: New York, NY 12/26/95

E.O. Osinowo

UNITED STATES DISTRICT COURT
SOURTHEN DISTRICT OF NEW YORK

---------- X

EZEKIEL O. OSINOWO - PLAINTIFF

AGAINST

CONTROLLER OF NYC - DEFENDANT

---------- X

STATE DE NEW YORK
BRONX COUNTY } **S.S.**

E. O. Osinowo - being duly sworn, deposed and says:

I, Ezekiel O. Osinowo, am the plaintiff in the above entitled action; and respectfully moves this court to issue an order to reconsider the order 12/15/95 by judge John S. Martin, Jr. under Rule 60 (b).

The reason why I am entitled to the relief I seek is as follows:

"The nature of the case was a neglected variable or fact in the order of 8/3/95. Both State Court and the Circuit can hear the case. Hence the Circuit has jurisdiction on this case. The idea is squarely supported by Roofer-Feldman doctrine exclusive procedure for review as specified at 28 USC # 1257. It was stressed by the plaintiff but the Court ignored it because he was not a lawyer. But the presentation of City lawyer was adopted for the Order of 8/3/95 wholly.

Both parties in this case accepted Roofer-Feldman doctrine as the basic law on which this case must be judged. It has the same judicial nature to the US Supreme Court but was projected to be inferior an inferior Federal Court stablished by Congress pursuant to: Article III Section I, of the Constitution may not act as an appellate tribunal for the

purpose of overruling a State Court judgement eve. _____

The exclusive procedure for Federal Review is specific at 28 USC #1257 " The Second Circuit (Court of Appeal)" has interpreted the Roofer-Feldman doctrine.

Hence is reflected the review called for by the plaintiff.

Citation, adopted from City lawyer in paragraph 3 order lacked any substantiate law basic owing to the fact that accepted Constitution right to justice of the plaintiff was distorted (Exclusion procedure of Roofer-Feldman doctrine). Conventional wisdom in law rejected the citations because they were not of equal content and context. Judge Ito of L.A. used it in past decision can serve as basic law owing to the fact that is established the Circuit itself or foundation law the Circuit.

It was accepted by the Court that U.S. Supreme Court can review final Order/decision of State Court of appeal but inferior U.S. Supreme Court is disarmed from playing similar role. They are similar in content and context but function on different levels. Hence the inferior U.S. Supreme Court can review the inferior State Court. It is a continuum balance and check scope of its capacity. Therefore Roofer-Feldman doctrine is not interpreted to the real point of its meaning. It was not used in Order of 8/3/95.

It should be noted that Court definition is not changed in any level of Federal Court.

The defendant did not respond to dismissal rejection of this case by the plaintiff.

Two cases in one were before the Court. It was only one of the two was judges as in the Order of 8/3/95.

A hint of the Order of 8/3/95 was echoed By the City lawyer in another motion request of 95 CIV 4297 (SJM) dated 7/11/95. One is but to question if this is wise locally or is the decision based on facts or relationship. The Plaintiff hereby appeal that the Court use both his response to dismissal request and this document to revive his request for counsel. Hence the plaintiff wants a representative to sound his part of the case.

It could be noted that Circuit Court findings negged the State Court's resolution in matter of facts and figures of both cases in one"

The court should note that Judge's orders have been responded to for reconsideration under Rule 60 (b) of Federal Rules of Civil Procedure have been and could not be a better base of order. The criticism of her order were repeated above in full content and context.

Wherefore, I, the plaintiff Ezekiel O. Osinowo, request that the court to grant the within motion, as well as such other and further relief and may be just and proper.

The plaintiff declared under penalty of perjury that the foregoing is true and correct.

Executed on 12/26/95 E.O. Osinowo

UNITED STATE COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 96-7134

OSINOWO, EZEKIEL Plaintiff
v.
CONTROLLER OF NEW YORK CITY Defendant
STATE OF NEW YORK }
BRONX COUNTY } SS

I, Ezekiel O. Osinowo, being duly sworn, deposed and says: in pursuit of Local Rule 27 (a) that following are the facts of the above case.

(a) Where appellant and appellee agreed was ignored (Feldman Doctrine.

(b) Constitutional right of appellant was ignored

(c) Convectional approach in judgment was abased

(d) No facts of the case was considered before judgment.

(e) None response of appellee was disregarded

(f) Appeal Court denial while appellee failed to respond to the motion as usual as in lower court.

One could be shocked that mate-reflection with sympathy overshadowed the Court of Appeal's judgment. It went beyond the appellant demand. No thorough examination of facts as above and no rejection of them. Conventional wisdom in law was neglected. It stated that no two events are ever the same.

It casted doubts on all citations quotes in Court of Appeals Judgment Justice was totally denied. Both parties accepted that Feldman Doctrine must be used as base of judgment. Without any defense Court of Appeals went into judgment when non-contest case was placed before the Court. Can law principle be destroyed for mate-reflection? It was the worst shame casted on the Court of Appeals. No analysis of facts was ever well stabilished in this case. Can class-emotion override justice? Yes, it was successfully done in this case. Justice must and should be allowed to reign supreme. How the Court of Appeals could justify a judgment based on a case under reconsideration in lower court justified is an amazement and ridicule of justice system The court review policy or power was bargained for no reward by court of Appeals as well as the lower court. Balance and check power of Court of Appeals and lower court was chattered in redundance from both judgments.

The appellant declared under penalty of perjury that the foregoing is true and correct.

E.O. Osinowo

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------- X

EZEKIEL OSINOWO Plaintiff,

v 95 Civ 4297

CONTROLLER OF NEW YORK CITY **ORDER**

Defendant

---------- X

JOHN S, MARTINJr. District Judge:

Plaintiff, who is proceeding pro se, seeks review by this court of decisions made by the Supreme Court of the State of New York, Bronx County. Defendant has moved to dismiss the complaint for lack of subject matter jurisdiction pursuant to Federal Rules of Civil Procedure 12 (b) (1) and (16).

In a separate case, 95 Civ. 2980, plaintiff filed a similar action seeking federal court review of another state Supreme Court decision. In an order dated August 3, 1995, Judge Shira A. Sheindlin of this court dismissed that case for lack of subject matter jurisdiction.

This issue in this case, whether a federal court can review the decision of a state court acting in a judicial capacity, is identical to the issue in the case before judge Sheindlin. This order thus adopts the reasoning of her August 1995 order, and grants defendant's motion to dismiss for lack of subject matter jurisdiction.

SO ORDERED

Dates: New York, New York
December 15, 1995

S.D.N.Y.
95-cv-4297
Martin, J.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 10th day of April one thousand nine hundred and ninety-six.

Ezekiel O. Osinowo

Plaintiff-Appellant,

v. 95-7134

Controller of the City of New York

Defendant-Appellee.

A motion having been made herein by appellant pro se for assignment of counsel, upon consideration thereof, it is ordered that said motion be and it hereby is denied, and the appeal is dismissed as so indisputably lacking in merit as to be frivolous. See Neitzke v. Williams, 490 U.S. 319 (1989); Pillay v. I.N.S., 45 F. 3d 14 (2d Cir. 1995). the district court properly held that it lacked jurisdiction to review state court judicial decisions. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Enginers, 398 U.S. 281, 296 (1970)

June 29. 1995

BY HAND
Hon John S. Martin
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Ezekiel Osinowo V Controller of NYC
95 Civ. 4279 (JSM)

Dear Judge Martin:

I am an assitant Corporation Counsel in the Office of Paul A. Crotty, Corporation Counsel of the City of New York, attorney for defendant herein. In accordance with the Court's rules, I write to request a pre-motion conference for defendant's motion to dismiss the complaint.

Having had an opportunity to review the complaint, it appears that plaintiff is seeking review in this action of adverse decision of the Supreme Court of the State of New York, County of Bronx. However, decisions of a state court acting in a judicial capacity are not reviewable by the federal district courts. District of Colombia Court of Appeals v Feldman, 460 U.S. 462, 476 (1983) (citing 28 U.S.C. & 1257; Atlantic Coast Line R. Co. v. Engineers, 398 U.S.. 281, 296 (1970); Rooker v. Fidelity Trust Co., U.S. 413, 415 (1923). In fact, the lower decisions in particular cases arising out of judicial proceeding even if those challenges allege that the state court's action was unconstitutional" Feldman, 460 U.S. at 486. The only federal court with authority to review the final decision of state courts is the United State Supreme Court, id, (citing 28 U.S.C. & 1257). See also Texaco Inc. v. Pennzoil Co., 784 F. 2d 1133, 1142-43 (2d Cir 1986), rev'd on other grounds, 481 U.S. 1 (1987)

Based upon the above-cited authorities, defendant believes that this Court lacks subject matter jurisdiction over plaintiff claims, and therefore, wishes to make a motion to dismiss the complaint, pursuant to Rules 12(b) and (6) of the Federal Rules of Civil Procedure.

Accordingly, defendant respectfully request the scheduling of a pre-motion conference and extension of its time to answer the complaint until such time as the Court determines whether it will permit defendant to make this motion.

Thank you for you consideration of this request.

Respectfully submitted,

NY CPLR 7804 (e)

(e) Answering affidavits; record to be filed; default.

"Should the body or officer fail either to file and serve an answer or to move to dismiss, the Court may either issue a judgment in favour of the petitioner or order that an answer be submitted.